such an act a wrong to the state, to say nothing of taking the further step and declaring it a tort.

Admittedly there is a social interest in the unhampered production of wealth, this interest being stronger when there is a great national need for the product in question. It is also true that such considerations of public interest will often induce equity to act where it would otherwise not act. Thus specific performance of contracts involving continuous performance and supervision of the most difficult sort has been decreed because there was a strong public policy in favor of having the contract carried out.[8] Equity has also enjoined an illegal quitting of work by railroad employees because they were in the public service.[9] It must never be lost sight of, however, that in these cases it was a legal right of the plaintiff which was enforced, and that the public interest involved went merely to the exercise of the court's discretion in granting the extraordinary remedies of equity. In the principal case there was no legal right in the plaintiff to have his employees refrain from striking during the war. It follows that an injunction should not have issued.[10]

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RESTRAINT OF PRINCES. — The "restraint-of-princes" clause, of ancient origin,[1] has since the beginning of the war been the subject of

taining recommendations as to the "Principles and Policies to Govern Relations between Workers and Employers for the Duration of the War." The pamphlet stated that "there should be no strikes and lockouts during the war." The court cited this as a "declaration by the United States Government of the principles which govern it in dealing with labor disputes in war industries." In so far as it is a declaration by the government it would seem to indicate that the government intended to limit itself to such an appeal and not to resort to compulsion to secure continuity of work in war industries. It is not for the court to alter this policy.

[8] Union Pacific Ry. Co. *v.* Chicago, Rock Island & Pacific Ry. Co., 163 U. S. 564 (1896); Joy *v.* United States, 138 U. S. 1 (1891); Edison Illuminating Co. *v.* Eastern Pennsylvania Power Co., 253 Pa. 457, 98 Atl. 652 (1916); Schmidtz *v.* Railroad Co., 101 Ky. 441 (1897). In Conger *v.* Railroad Co., 120 N. Y. 29, 23 N. E. 983 (1890), specific performance of a contract was denied because of the public interest in non-performance.

[9] Toledo, etc. Ry. Co. *v.* Pennsylvania Co., 54 Fed. 746 (1893).

[10] A recent case in New Jersey, Driver *v.* Smith, 104 Atl. 717 (1918), presents the reverse of the situation in the principal case, specific performance of a contract which interfered with war work being denied. In that case the defendant, an essential employee in a war industry, had contracted to leave his position and to work for the plaintiff. Upon his refusal to do so the plaintiff sought to enjoin breach of the negative side of the contract, not to work for anyone but the plaintiff. The court denied the injunction, on the ground that the evidence showed that the plaintiff had made this contract solely to injure the defendant's employer, and that he had no legitimate interest in its enforcement.

The court expressly denied that it would refuse relief merely because the defendant was essential to war work, saying in the course of the opinion: "It would be an intolerable situation if each court before whom the rights of individuals were litigated were permitted to determine whether relief should be granted or withheld upon its opinion as to whether the granting or withholding of its relief would aid or injure the government in its war activities. . . ."

[1] The origin of the clause, although obscure, was probably continental. See EMERIGON, INSURANCE, c. 12, § 30 (Meredith's ed.), 420, and the citations of other continental writers in 1 PHILLIPS, INSURANCE, 5 ed., par. 1115. See, also, 1 PARSONS, MARINE INSURANCE, 575 *et seq.* *Cf.* the limited definition in 1 CALVO, DICTIONNAIRE DE DROIT INTERNATIONAL, 61, tit., "Arrêt de Prince."

construction by American and British courts in the three species of contracts in which it is still commonly employed, namely, charter-parties,[2] contracts of affreightment,[3] and contracts of marine insurance.[4] While the wording of this clause frequently varies, such minor verbal variations have not affected the construction given to it; indeed, it would seem that the clause has acquired a legal individuality, so to speak, which no mere change in verbiage can destroy. Thus, whether the classic formula of "arrests, restraints and detainments of all kings, princes and people, of what nation, condition or quality so ever," [5] or the phrase, perhaps commonest nowadays, "arrests and restraints of princes, rulers or people," [6] or some even more abbreviated modification is used,[7] the courts waste no time in attempting to gather from the words used the meaning of the parties, but give the various phrasings of the clause an identical effect, — a procedure which would seem to be wholly proper. Hence the varying results of their construction of it can hardly be attributed to any difference in subject matter.

While generally one of force, the restraint may be one of law alone. Although clearly a person subject to his jurisdiction could not be expected to proceed in violation of a law of a sovereign until forcibly restrained, only recently was it actually decided that such prohibition, in itself inducing obedience, was a restraint. This was perhaps due to the fact that when performance of a contract becomes illegal by domestic law, it is not necessary to rely on the restraint-of-princes exception as a defense for nonperformance.[8] But when the question arose on a policy

[2] Embiricos *v.* Sydney Reid & Co., [1914] 3 K. B. 45; F. A. Tamplin S. S. Co., Ltd. *v.* Anglo-American Petroleum Products Co., Ltd., [1916] 2 A. C. 397, discussed and distinguished in Metropolitan Water Board *v.* Dick, Kern & Co., Ltd., [1918] A. C. 119; Scottish Navigation Co., Ltd. *v.* W. A. Souter & Co., [1917] 1 K. B. 222; Modern Transport Co., Ltd. *v.* Duneric S. S. Co., [1917] 1 K. B. 370; Chinese Mining & Engineering Co., Ltd. *v.* Sale & Co., [1917] 2 K. B. 599; Furness, Withy & Co. *v.* Rederiaktiegolabet Banco, [1917] 2 K. B. 873; Watts, Watts & Co., Ltd. *v.* Mitsui & Co., Ltd., [1917] A. C. 227; Countess of Warwick S. S. Co. *v.* Le Nickel Societé Anonyme, [1918] 1 K. B. 372; The Athanasios, 228 Fed. 558 (1915); Atlantic Fruit Co. *v.* Solari, 238 Fed. 217 (1916); W. R. Grace & Co. *v.* Luckenbach S. S. Co., 248 Fed. 953 (1918); Rederiaktiebolaget Amie *v.* Universal Transportation Co., 250 Fed. 400 (1918); The Adriatic, 253 Fed. 489 (1918); Earn Line S. S. Co. *v.* Sutherland S. S. Co., Ltd., 254 Fed. 126 (1918).

[3] Ciampa *v.* British India Steam Navigation Co., Ltd., [1915] 2 K. B. 774; Associated Portland Cement Manufacturers *v.* Wm. Cory & Son, Ltd., 31 T. L. R. 442 (1915); East Asiatic Co., Ltd. *v.* S. S. Tronto Co., Ltd., 31 T. L. R. 543 (1915); St. Enoch Shipping Co., Ltd. *v.* Phosphate Mining Co., [1916] 2 K. B. 624; The Svorono, 33 T. L. R. 415 (1917); The Kronprinzessin Cecilie, 244 U. S. 12 (1917); The Bris, 253 Fed. 259 (1918); The Gracie D. Chambers, 253 Fed. 182 (1918), discussed in 32 HARV. L. REV. 581, and 28 YALE L. J. 279.

[4] British & Foreign Marine Insurance Co., Ltd. *v.* Samuel Sanday & Co., [1916] 1 A. C. 650; Becker, Gray & Co. *v.* London Assurance Corporation, [1918] A. C. 101; Russian Bank for Foreign Trade *v.* Excess Insurance Co., Ltd., [1918] 2 K. B. 123 (result approved in [1919] 1 K. B. 39). *Cf.* Mitsui *v.* Mumford, [1915] 2 K. B. 27.

[5] Becker, Gray & Co. *v.* London Assurance Corporation, *supra*. See 1 PHILLIPS, INSURANCE, 5 ed., par. 1108. A continental form given by Emerigon is "arrest and detention of prince and sovereign."

[6] Furness, Withy & Co. *v.* Rederiaktiegolabet Banco, *supra;* The Kronprinzessin Cecilie, *supra*.

[7] See Ciampa *v.* British India Steam Navigation Co., Ltd., *supra;* Russian Bank for Foreign Trade *v.* Excess Insurance Co., Ltd., *supra*.

[8] Thus the clause was not relied on in St. Enoch Shipping Co., Ltd. *v.* Phosphate Mining Co., *supra*.

of insurance, it was held in *British & Foreign Marine Insurance Co., Ltd.* v. *Samuel Sanday & Co.*[9] that the abandonment by a British ship of a voyage to a German port, which had become illegal upon the outbreak of war, was a loss caused by the peril insured against. The decision was linked up with previous cases on the ground that behind law stands force whereby obedience is compelled. Applying this theory to another state of facts the Court of King's Bench held that the requisition of a vessel by an *ultra vires* order of the Admiralty was not a restraint, since the owner was under no obligation to obey.[10] The result seems questionable in any case and especially so where the authorities concerned have means of enforcing their regulations. For the pressure on the shipowner may be great, however unlawful its threatened application. If force is actually employed illegally by governmental agencies it constitutes a restraint.[11] The improper order in the case just cited should be placed in a similar category.

It is generally said that any forcible interference with a voyage or adventure by a constituted government or ruling power is covered by the restraint-of-princes clause.[12] The chief question then is as to what will constitute a restraint short of the actual physical application of force. A situation frequently arises where the master of a vessel deviates from his course to avoid a peril known to be in existence, such as an embargo at or blockade of the port of destination. Must the vessel attempt to run a blockade before the restraint-of-princes clause may be relied on? On this point a difference in result has developed between cases of insurance on the one hand and those of charter-parties and bills of lading on the other. The former were the first to arise, and the prevailing view expressed was that there had been no restraint of the vessel under such circumstances. In other words, a loss of the adventure through reason-

[9] *Supra.* Similarly, where a foreign shipowner, having entered into an English charter party, was prohibited by the law of his sovereign from carrying out the contract. Furness, Withy & Co. *v.* Rederiaktiegolabet Banco, *supra*, discussed in 31 HARV. L. REV. 799. But the owner of cargo on a foreign vessel, having no control over it, cannot rely on the clause on the ground of illegality through trading with the enemy. See Becker, Gray & Co. *v.* London Assurance Corporation, *supra*, 117. The clause does not apply to ordinary judicial proceedings. Bradlie *v.* Maryland Insurance Co., 12 Pet. (U. S.) 378, 402 (1838).

[10] Russian Bank for Foreign Trade *v.* Excess Insurance Co., Ltd., *supra*. This point was questioned in the Court of Appeal, which affirmed the decision on another ground. See [1919] 1 K. B. 39, 40. *Cf.* Brunner *v.* Webster, 5 Com. Cas. 167 (1900); Northern Pacific Ry. Co. *v.* American Trading Co., 195 U. S. 439, 468 (1904).

[11] Lozano *v.* Janson, 2 E. & E. 160 (1859); Magoun *v.* New England Marine Insurance Co., 16 Fed. Cas. No. 8961 (1840). The courts generally will not consider the legality of official acts of a foreign government under its own law. The Athanasios, *supra;* The Adriatic, *supra;* Earl Line S. S. Co. *v.* Sutherland S. S. Co., Ltd., *supra*.

[12] See CARVER, CARRIAGE OF GOODS BY SEA, 6 ed., § 82; MACLACHLAN, MERCHANT SHIPPING, 5 ed., 607; SCRUTTON, CHARTER-PARTIES AND BILLS OF LADING, 7 ed., 207. Doubt, expressed in early cases as to whether a party was protected under the clause upon a restraint by his own sovereign, was removed in Aubert *v.* Gray, 3 B. & S. 163 (1861). Usually the restraint arises out of conditions of war, but frequently this is not so. Detention under quarantine regulations is a common instance. Miller *v.* Law Accident Insurance Co., [1903] 1 K. B. 712; The Bohemia, 38 Fed. 756 (1889); Tweedie Trading Co. *v.* Geo. D. Emery Co., 146 Fed. 618 (1906). *Cf.* Ciampa *v.* British India Steam Navigation Co., Ltd., *supra*. The restraint usually takes place on the sea, but may be on land. Rodoconachi *v.* Elliott, L. R. 9 C. P. 518 (1874); Robinson Gold Mining Co. *v.* Alliance Insurance Co., [1901] 2 K. B. 919.

able action to avoid the peril insured against is not a loss within the terms of the policy.[13] Later arose the second line of cases involving similar circumstances, in which nonperformance of a charter-party or bill of lading was uniformly excused under the restraints clause. Nor is a formal blockade or embargo insisted upon, but the danger of seizure of a belligerent merchantman by enemy warships or of seizure of a neutral for carrying contraband is held sufficient.[14] This seems sound, for the difference between this and actual seizure is merely in the time and space through which the restraint may operate. The degree of apprehension reasonably entertained under the circumstances may be said to be an index of its extent. And surely the vessel should not be required to proceed to certain destruction, in order to establish a defense under this exception to the contract.

As is repeatedly stated by the courts, a phrase so commonly employed should be construed in the same way in every type of mercantile contract. Accordingly later cases have explained the apparent conflict between the two lines of authorities on the ground of causation, rather than on any difference in the interpretation of the phrase itself. Thus in the recent case of *Becker, Gray & Co.* v. *London Assurance Corporation*,[15] it was said that in insurance cases a stricter rule of causation must be applied. There insurance was issued on British goods bound for Hamburg on a German vessel. War broke out, and the captain to avoid capture, put into a neutral port to remain until the end of the war. The court held that the frustration of the adventure was caused, not by the peril insured against, but by the voluntary act of the captain in putting into port, this latter being the "direct cause." This strict rule may have arisen from a reluctance to allow a recovery as for a total loss under such circumstances. But it has been well settled that where goods are insured under such a policy from port of origin to port of destination, the owner may abandon to the underwriters as a total loss, if the adventure is frustrated by a peril insured against, although the goods are themselves undamaged.[16] The insurance is not merely of the merchandise from injury, but also of its safe arrival. There seems to be no reason therefore for applying any rule stricter than the normal principles of proximate causation. It is certainly to the best interests of all concerned to avoid a complete destruction of the property. One may wonder if the court would expect the captain to negotiate Scylla and Charybdis.

[13] Hadkinson *v.* Robinson, 3 B. & P. 388 (1803); Lubbock *v.* Rowcroft, 5 Esp. 50 (1803); Blackenhagen *v.* London Assurance Co., 1 Campb. 454 (1808); Richardson *v.* Maine Insurance Co., 6 Mass. 102 (1809); Brewer *v.* Union Insurance Co., 12 Mass. 170 (1815). But in some American jurisdictions the opposite conclusion was reached. Schmidt *v.* United Insurance Co., 1 Johns. (N. Y.) 249 (1806); Thompson *v.* Read, 12 Serg. & R. (Pa.) 440 (1820) (*semble*). See 1 PHILLIPS, INSURANCE, 5 ed., par. 1115. The federal courts drew a distinction between the failure to attempt to enter a blockaded port and the failure to attempt to leave such a port. Smith *v.* Universal Insurance Co., 6 Wheat. (U. S.) 176 (1821); Olivera *v.* Union Insurance Co., 3 Wheat. (U. S.) 183 (1818).

[14] Geipel *v.* Smith, L. R. 7 Q. B. 404 (1872); The San Roman, L. R. 5 P. C. 301 (1873); Nobel's Explosives Co. *v.* Jenkins & Co., [1896] 2 Q. B. 326; Embiricos *v.* Sydney Reid & Co., *supra;* The Styria, 186 U. S. 1 (1901).

[15] *Supra.* In Kacianoff *v.* China Traders Insurance Co., [1914] 3 K. B. 1121, the peril insured against was capture and not restraint-of-princes.

[16] See British & Foreign Marine Insurance Co., Ltd. *v.* Samuel Sanday & Co., *supra*, 656.

In all these cases the courts are careful to point out that there is an actual force in existence, and that the danger must be such that the vessel cannot reasonably be expected to proceed.[17] Thus there is no restraint, when the captain acts upon false intelligence as to the existence of the danger.[18] In the case of *The Kronprinzessin Cecilie*,[19] one question presented was whether a deviation, caused by reasonable fear that a force might come into existence, could constitute a restraint of princes. A German vessel, bound for European ports, turned back to America through fear of capture at a time when war, although threatened, had not yet broken out. Action was brought on a contract of affreightment, and the court refused to extend the restraint-of-princes clause to this situation, — a conclusion thoroughly sound, for the justification should be determined as of the time of deviation, and there was then no force in existence. Thus if the question arose on an insurance policy, and if the threatened war had never been declared, it could not be said that the loss was caused by any peril insured against. There is here mere apprehension, which of itself cannot constitute a restraint.[20]

It does not, however, follow that the captain's action in deviating is unreasonable or improper; and in *The Kronprinzessin Cecilie*, recovery against the shipowners was denied on the ground that the act was justified under an implied condition of the contract. This really rests on the proposition that the voyage is a joint maritime enterprise, that the captain is the agent of the respective owners of both ship and cargo, and that so long as he acts reasonably for the best interests of all concerned, no liability will be imposed upon his employers. This theory was also relied on in a number of the cases which held that reasonable avoidance of an existing force falls within the terms of the restraint-of-princes clause.[21] Indeed it probably did much to facilitate recognition of the latter principle. It may properly be applied in the case of a charter-party or bill of lading, but cannot apply to cases of insurance. It is of course independent of the restraint-of-princes clause, and seems to form the only proper basis for distinguishing insurance cases from the others.[22]

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[17] "In the absence thereof [actual arrest], there must exist some actual restraint preventing performance, or the danger of capture, by reason of the prevalence of the war, that was imminent, apparently remediless and certain, and which would have operated to prevent the contract from being performed." W. R. Grace & Co. *v.* Luckenbach S. S. Co., *supra*, 954. This is perhaps too strict a test. For another instance of unreasonable apprehension, see The Svorono, *supra*.

[18] King *v.* Delaware Insurance Co., 6 Cranch (U. S.) 71 (1810); Craig *v.* United Insurance Co., 6 Johns. (N. Y.) 226 (1810).

[19] *Supra*. The decision of the Circuit Court of Appeals, 238 Fed. 668, reversed by the Supreme Court in this case is discussed in 30 HARV. L. REV. 516.

[20] It should be noted that this was the situation in Atkinson *v.* Ritchie, 10 East, 530 (1809), which is often cited for the proposition that an act induced by fear of a restraint is never covered by the restraint-of-princes clause. The shipowner acted through apprehension of an embargo at the port of destination, which actually was not imposed until six weeks later. See, also, Watts, Watts & Co., Ltd. *v.* Mitsui & Co., Ltd., *supra*.

[21] See Nobel's Explosives Co. *v.* Jenkins & Co., *supra*, 332; The Styria, *supra*, 9, 10. The British courts have even said that the cargo owner cannot expect a foreign master to run greater risks than he would with a cargo of his own country. See The Teutonia, L. R. 4 P. C. 171, 179–80 (1872); The San Roman, *supra*, 307. For the application of the principle in the absence of a restraint-of-princes clause, see Essex S. S. Co. *v.* Langbehn, 250 Fed. 98 (1918), and The Eros, 251 Fed. 45 (1918).

[22] A difference in result also arises when negligence of the master or crew has con-

TAX LIENS ON LAND HELD ADVERSELY FOR THE STATUTORY PERIOD. — It is customary for the legislature to provide that there shall be a lien on land for taxes due. Even though no lien is expressly created, as long as the statute provides for the sale of real estate such taxes in effect impose an encumbrance on the land.[1] Such legislation may be divided roughly into two classes: the first makes the tax a lien on the *corpus* of the land without regard to the state of the title; the second subjects to the possibility of sale only the estate of the tax debtor.[2] Under the first type of statute a tax sale followed by a delivery of the tax deed after the period allowed for redemption would, provided all statutory requirements were exactly followed and the taxes in default were levied and assessed in accordance with law, pass a fee simple to the purchaser. But where only the estate of the tax debtor can be disposed of, *caveat emptor*.

It frequently happens that a tax lien attaches to the *corpus* of land held adversely to the holder of the legal title. If the tax lien attaches to the land after the Statute of Limitations has run, it is, of course, incumbent on the new owner of the land to discharge the tax thereon, even though the holder of the record title was named in the assessment. Where the lien attaches to the land *before* the adverse possession has ripened into title it may be asked whether such a lien will prevent the acquisition of title when the period prescribed by the statute has expired. There is no good reason why it should do so. An adverse possessor acquires a title independent of the former owner. But it is clear that the land remains subject to the lien, and that the owner under the statute must pay the taxes or suffer foreclosure.[3] It is sometimes said that twenty years' adverse possession creates a paramount title. This should be qualified. The land so acquired remains subject to an easement in favor of the owner of adjoining premises unless the holding has been adverse to the easement.[4] Where a lien is imposed on the very land itself, possession cannot be adverse to it, and no period of holding can destroy it any more than it can destroy the land.

The next question is whether a sale of land on foreclosure of such a lien interrupts the adverse possession, so that no title is acquired against the purchaser for taxes until the Statute of Limitations has run anew after the delivery of the tax deed. The answer is emphatically in the

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tributed to the subjection of the vessel to a restraint. In such event, the shipowner is not excused from performance of a contract by the restraint-of-princes clause. But unless he himself contributed to the loss, he can still recover upon a policy of insurance. See CARVER, CARRIAGE OF GOODS BY SEA, 6 ed., § 88; SCRUTTON, CHARTER-PARTIES AND BILLS OF LADING, 7 ed., 195–98. *Cf.* Dunn *v.* Bucknall Brothers, [1902] 2 K. B. 614.

[1] See 2 TIFFANY, REAL PROPERTY, § 573.

[2] See *Ibid.*, §§ 467–70. See BLACK, TAX TITLES, 2 ed., § 419.

[3] As long as the sovereign has something less than ownership of the land the proprietary right of the adverse possessor clearly should be protected. The state will recognize his right to compensation when the land is taken by right of eminent domain before the statute has tolled the entry. Perry *v.* Clissold, [1907] A. C. 73. See 20 HARV. L. REV. 563, 574. See, also, 27 HARV. L. REV. 496.

[4] Another situation where the adverse possessor may acquire land subject to encumbrance is found in the case of equitable servitudes, or restrictions enforceable only in equity. *Re* Nisbet and Potts' Contract, [1905] 1 Ch. 391, affirmed, [1906] 1 Ch. 386. See 18 HARV. L. REV. 608.